

**REMARKS/ARGUMENTS**

Claims 1-28 are pending, while Claims 14 and 23-28 have been withdrawn. In the final Office Action, the Examiner now rejects Claims 1-6, 9, 16, and 17-21 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,923,404 to Liu et al. The Examiner also rejects Claims 1-10 and 16-22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,669,137 to Chen in view of Liu. Furthermore, the Examiner rejects several of the dependent claims over Liu and a combination of Liu and/or Chen with various secondary references.

Independent Claims 1 and 16 have been amended for clarification, while dependent Claim 20 has been canceled. Applicant submits that such amendments do not raise new issues, as Claim 1 does not add any matter not previously presented, while the amendment to Claim 16 also does not add matter not previously presented and incorporates a portion of canceled Claim 20. Based upon the attached 37 C.F.R. §1.131 Declaration and following remarks, Applicant respectfully traverses the rejections of Claims 1-13 and 15-22. Therefore, in light of the Declaration and subsequent remarks, which do not raise new issues, Applicant respectfully requests reconsideration and allowance of the present application.

Applicants initially assert that the 1.131 Declaration be considered at this stage of prosecution. In this regard, MPEP § 715.09 indicates that seasonable presentation of a declaration under 37 C.F.R. 1.131 is after final rejection and submitted with a first reply after final rejection for the purpose of overcoming a new ground of rejection or requirement made in the final rejection. In the final Office Action, the Examiner raises new grounds of rejection in light of both Liu and Chen that were previously not raised during prosecution of the present application. In particular, the Examiner did not previously rely on Liu at all in rejecting the claims, and although Chen was previously relied upon by the Examiner, Chen was not cited in combination with Liu. Therefore, Applicant submits that the 1.131 Declaration submitted herewith is seasonable and should be considered at this stage of prosecution.

As indicated above, a 37 C.F.R. §1.131 Declaration signed by the Applicant is attached to "swear behind" Liu and Chen, and the Applicant respectfully submits that the 131 Declaration presented is sufficient to overcome the rejections under 35 U.S.C. §§ 102(e) and 103(a) in the final Office Action. The 131 Declaration demonstrates that the Applicant actually reduced the claimed invention to practice prior to the filing date of Liu, a § 102(e) reference, and prior to the

Appl. No.: 10/811,735  
Amdt. dated 3/12/2007  
Reply to Office action of 11/15/2006

issue date of Chen, a § 102(a) reference. Therefore, neither Liu nor Chen can be cited against the present application as prior art under 35 U.S.C. §§ 102(e) or 103(a).

Actual reduction to practice requires that: 1) the party constructed an embodiment or performed a process as recited by the claimed invention, and 2) the embodiment or process operated for its intended purpose. The description and test data provided in Exhibits 1 and 2 substantiate that the Applicant constructed a scaled representative model of a missile that worked for its intended purpose prior to January 10, 2003, the filing date of Liu, and August 5, 2003, the issue date of Chen. In particular, Exhibits 1 and 2 disclose the missile and missile system of independent Claims 1 and 16 of the present application. With respect to independent Claims 1 and 16, Exhibit 1 discloses a missile including a fuselage member configured to carry an engine. In addition, Exhibit 1 discloses a wing actuator carried by the fuselage member and an oblique wing member pivotally connected to the fuselage member. Exhibit 1 further discloses that the wing member is pivotable by the wing actuator from a position substantially aligned with the fuselage member to a predetermined sweep angle of less than 90 degrees at transonic speed during flight (e.g., between 30 and 40 degrees). Furthermore, Exhibit 1 discloses a missile releasably attached to an aircraft.

Exhibit 2 also discloses that a scaled representative model of a missile was constructed and that actual testing was performed. In addition, Exhibit 2 discloses that preliminary testing had been performed with actual data. Namely, Exhibit 2 discloses that a scaled representative model of a missile having a pivotable oblique wing according to one embodiment of the claimed invention was tested in a wind tunnel. Exhibit 2 also discloses test results of the experiment, including L/D at various angles of attack and Mach numbers, as well as a comparison of the drag coefficient at various Mach numbers for both conventional and oblique wings. Therefore, Applicant submits that prior to the filing date of Liu and the issue date of Chen, the claimed invention was reduced to practice, as Exhibit 2 demonstrates that a scaled representative model was developed to perform the claimed invention and that the model worked for its intended purpose.

For the forgoing reasons, Liu and Chen may not be relied upon as prior art, and none of the cited references, taken either individually or in combination, teach or suggest the missile and missile system of independent Claims 1 and 16 or any of the claims that depend therefrom.

Appl. No.: 10/811,735  
Amdt. dated 3/12/2007  
Reply to Office action of 11/15/2006

Thus, the rejections of Claims 1-13 and 15-22 under 35 U.S.C. §§ 102(e) and 103(a) are overcome.

### CONCLUSION

In view of the amendments, declaration, and remarks presented above, which do not raise new issues, it is respectfully submitted that all of the present claims of the present application are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Trent A. Kirk  
Registration No. 54,223

**Customer No. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON March 12, 2007.**

LEGAL02/30289631v1